

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PAUL SWISHER,

Plaintiff,

vs.

LISA COLOGNA, *et al.*,

Defendants.

Case No. 2:15-cv-01138-MMD-GWF

ORDER

This matter is before the Court on Plaintiff's Motion to Amend (#11), filed on July 9, 2015. Defendant Cologna filed a Response (#14) on July 27, 2015. Plaintiff filed his Reply (#19) on August 6, 2015. This matter is also before the Court on Plaintiff's Motion for Appointment of Counsel (#12), filed on July 9, 2015.

Plaintiff moves for leave to file an amended complaint. Previously, Plaintiff was appearing *pro-se* in this action. Plaintiff has since acquired counsel. *See* Notice of Appearance (#18). Counsel filed the Reply brief on behalf of the Plaintiff, and indicated that he would like to draft a new amended complaint. Fed. R. Civ. P. 15(a)(2) provides that leave to amend shall be freely given when justice requires. As this Court has previously stated, "Rule 15's policy of favoring amendments to pleadings should be applied with 'extreme liberality'" where the motion to amend "is not sought in bad faith, does not cause the opposing party undue delay, does not cause the opposing party undue prejudice, and does not constitute an exercise in futility." *Wright v. Incline Village General Imp. Dist.*, 597 F.Supp.2d 1191, 1210 (D.Nev. 2009) citing *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 187 (9th Cir. 1987).

The Court finds that Plaintiff's motion is not sought in bad faith, does not cause undue delay, does not cause undue prejudice, and does not constitute an exercise in futility. However, the proposed Amended Complaint (attached to #11) was drafted by the *pro-se* Plaintiff. In order to allow counsel to


1 draft an amended complaint, the motion to amend will be denied without prejudice. Plaintiff may file a
2 new motion to amend with the proposed amended complaint attached. Furthermore, because Plaintiff
3 has now acquired counsel, the Motion for Appointment of Counsel (#12) is moot. Accordingly,

4 **IT IS HEREBY ORDERED** that Plaintiff's Motion to Amend (#11) is **denied** without
5 prejudice.

6 **IT IS FURTHER ORDERED** that Plaintiff, through his counsel, shall file a new motion to
7 amend, with an attached proposed amended complaint, no later than **October 16, 2015**.

8 **IT IS FURTHER ORDERED** that Plaintiff's Motion for Appointment of Counsel (#12) is
9 **denied** as moot.

10 **DATED** this 2nd day of October, 2015.

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13 GEORGE FOLEY, JR.
14 United States Magistrate Judge
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